

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

CITIBANK, N.A.

LETTER ROGATORY FORM THE 2nd FAMILY
AND PROBATE COURT OF THE CENTRAL
CIVIL COURTHOUSE, FEDERATIVE
REPUBLIC OF BRAZIL

Civil Case No. 15-_____

**MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR ORDER PURSUANT TO 28 U.S.C. § 1782**

COMES NOW the United States of America, and submits this Memorandum of Law in support of the Application for an Order Pursuant to 28 U.S.C. § 1782, to execute letters of request from judicial authorities in Brazil, for international judicial assistance to obtain certain transaction records as follows:

I. The Brazilian Court's Request.

The request for international judicial assistance comes from State of Sao Paulo Court of Justice 2nd Family & Probate State Court of the Central Civil Courthouse, Federative Republic of Brazil, located in Sao Paulo, Brazil. Specifically, Honorable Judge of First Instance, Marcelo Barbosa Sacramone, has issued a Letter Rogatory requesting assistance to obtain the bank records and accounts of Jose Carlos Nastari a/k/a Jose C. Nastari, with Citibank N.A., Santa Marina Bldg., Rexco Industrial Park, Corner St. 1, State Road 165, Guaynabo, P.R 00968 providing a bank statement history for the year 2007 and any other movement relating to or on behalf of Jose Carlos Nastari in which he is the main or additional title holder of the account or a dependent or occasional title holder, both in Brazil and abroad, including all accounts and investments with movement in Brazil and abroad, one of such probable accounts being account no. ending in xxxxxx1802. See attached Letter Rogatory dated August 27, 2014. (See Exhibit 1 in Portuguese and its English translation in Exhibit 2).¹

¹ The Exhibits will be separately filed *Ex-Parte* due to the sensitive financial and identification information they contain.

The facts of the case, as stated in the Letter Rogatory, indicate that the matter is related to a contested divorce between Vera Misura Nastari and Jose Carlos Nastari a/k/a Jose C. Nastari, Brazil Case No. 060157.2-40.2008-8-26.0100.

In this Letter Rogatory, the Honorable Judge Barbosa Sacramone has requested this Court's assistance to obtain from Citibank, N.A Puerto Rico all relevant bank accounts and/or investment accounts held by Jose Carlos Nastari a/k/a Jose C. Nastari, copy of which has been attached to the Rogatory Letter (See Exhibit 1 and Exhibit 2).²

Judge Barbosa Sacramone's Letter was transmitted to the U.S. Department of Justice, Civil Division, Office of Foreign Litigation, Washington, D.C. pursuant to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 23 U.S.T. 2555, reprinted in 28 U.S.C. § 1781³. The Letter was then transmitted to the U.S Attorney Office for the District of Puerto Rico for execution in accordance with 28 C.F.R. § 0.49 (c). In order to execute the request for international judicial assistance, authority must be obtained from this Court. 28 U.S.C § 1782.

II. Court's Legal Authority under 28 U.S.C 1782 to Provide International Judicial Assistance.

The authority for this Court to Assist foreign tribunals in obtaining documents is contained in 28 U.S.C § 1782. This section states in pertinent part:

Assistance to foreign and international tribunals and to litigants before such tribunals (a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal... The order may be made pursuant to a Letter Rogatory issued, or request made, by a foreign or international tribunal upon the application of any interested person and may direct that the document or

² *Idem.*

³ See also, *Societe Nationale Industrielle Aerospatiale v. United States Dist. Court for the S. Dist. of Iowa*, 482 U.S 522(1987) (a brief history of the Hague Evidence Convention).

other thing be produced, before a person appointed by the court. ... The order may prescribe the practice and procedure for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or thing produced in accordance with the Federal Rules of Civil Procedure.

28 U.S.C. § 1782(a). This statute was "designed to facilitate the conduct of litigation in foreign tribunals, improve international cooperation in litigation, and put the United States into the leadership position among world nations in this respect." *In re Application Pursuant to 28 U.S.C. § 1782 for an Order permitting Bayer AG to Take Discovery*, 146 F.3d 188, 191-92 (3d Cir. 1988). (hereafter *In re Bayer AG*)⁴. Despite the permissive language of section 1782, there is not "unbridled and unlimited discovery under the statute." *Bayer AG v. Betachem, Inc.*, 173 F. 3d 188,191 (3d Cir. 1999). Instead, "the discovery process is generally guided by the Federal Rules of Civil Procedure" and subject to the district court's discretion. *Id.*

The courts have applied a three-part test to determine whether a district court is authorized to grant request for foreign assistance: (1) the person or document for which discovery is sought resides or is found in the district; (2) the discovery is for use in a proceeding before a foreign or international tribunal; and (3) the application is made "by a foreign or international tribunal" or "any interested person." *In re Bayer AG*, 146 F.3d at 193; *Schmitz v. Bernstein & Lifshitz, LLP*, 376 F.3d 79, 83 (2d. Cir.2004).

III. Because the statutory requirements are satisfied, this court should exercise its discretion and appoint a Commissioner to obtain the requested documents.

There is no dispute that the requirements of 28 U.S.C § 1782 are satisfied and the requested records should be produced. The request for assistance comes from Brazil National Judge Marcelo Barbosa Sacramone who is currently presiding over a contested divorce case in Sao Paulo, who has

⁴ See also S. Rep. No. 88-1580 at 2 (1964), reprinted in 1964 U.S.C.A.N.3783 (providing Congress' general statement regarding the purpose behind the statute; *Intel Corporation v. Advanced Micro Devices, Inc.*, 124 S. Ct. 2466, 2473-74 (2004) (providing a brief history of federal-court aid to foreign tribunals and Section 1782).

requested this Court's assistance for "Service of process upon the Director/Manager and/or representative of Citibank N.A. ..." to forward to this Court and to fulfill all necessary formalities so that Citibank N.A. from Puerto Rico inform whether Jose C. Nastari had bank accounts and brokerage accounts with Citibank, N.A. Puerto Rico all relevant bank accounts and/or investment accounts held by Jose C. Nastari, copy of which has been attached to the Rogatory Letter (See Exhibit 1 and Exhibit 2).⁵

In order to fulfill the treaty obligations of the United States, the United States Attorney for this district is an "interested party" that has applied to this Court for authority to obtain the requested records. Once our Application is granted pursuant to 28 U.S.C. § 1782, the necessary subpoenas will be issued and served on Citibank N.A. requesting the production of the financial information related to Jose Carlos Nastari. Upon receipt of the requested financial information, it will be sent to the Department of Justice, Office of Foreign Litigation in Washington, D.C., for transmission to the State of Sao Paulo Court of Justice 2nd Family & Pro State Court of the Central Civil Courthouse, Federative Republic of Brazil, located in Sao Paulo, Brazil.

WHEREFORE, the United States respectfully requests that the Court issue an Order, in the form attached to the application (Attachment A), appointing Assistant U.S. Attorney Agnes I. Cordero as a Commissioner for the purpose of issuing a subpoena or subpoenas to execute the request for international judicial assistance.

In San Juan, Puerto Rico, this 25th day of September 2015.

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⁵ See footnote 1, above.